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Part 211

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purchasers which are not otherwise described in paragraphs (b) and (c) of this section. Such end-users shall be supplied in accordance with the provisions of § 211.10(d)(2).

Subsection (e), in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 44 F. R. 26712 (5/4/79), effective 5/1/79:

(e) *Wholesale purchaser-resellers.* Wholesale purchaser-resellers shall receive allocations on the basis of their base period volumes as determined by § 211.12(c) and adjusted in accordance with § 211.13.

Subsection (e), in 44 F. R. 26712 (5/4/79), effective 5/1/79, read as follows until its amendment in 44 F. R. 42549 (7/19/79), effective 9/1/79:

(e) *Base period volume.* (1) By June 15, 1979, each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers, the volume of motor gasoline which it sold to or transferred to that purchaser in each month of the base period year.

Subsection (e) in 44 F. R. 42549 (7/19/79), effective 9/1/79, read as follows until its amendment in 44 F. R. 42549 (7/19/79), effective 8/1/79:

(e) *Base period volume.* By September 15, 1979, each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers, the volume of motor gasoline which it sold to or transferred to that purchaser in each month of the base period year.

Subsection (f) originated in 44 F. R. 26712 (5/4/79), effective 5/1/79.

Subsection (f), in 44 F. R. 26712 (5/4/79), effective 5/1/79, read as follows until its amendment in 44 F. R. 42549 (7/19/79), effective 9/1/79:

(f) *Resolution of disputes.* If a supplier and purchaser disagree over the volumes required to be supplied as a base period volume or as an adjusted base period volume, application for resolution of the dispute should be made to the appropriate DOE enforcement division. DOE may require the production of any relevant information necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

Subsection (f) in 44 F. R. 42549 (7/19/79), effective 9/1/79, read as follows until its amendment in 44 F. R. 42545 (7/19/79), effective 8/1/79:

(f) *Resolution of disputes.*

If a supplier and purchaser disagree over the volumes required to be supplied as a base period volume or as an adjusted base period volume, application for resolution of the dispute should be made to the Office of Petroleum Operations of the appropriate EIA Regional Office. ERA may require the production of any relevant information and issue an order under the procedures of Subpart G of Part 205 or take any other action necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

Subsection (g) originated in 44 F. R. 42545 (7/19/79), effective 8/1/79.

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Sec. 211.104 Unusual growth adjustment.

(a)(1) Beginning in May 1979, if a retail sales outlet, wholesale purchaser-consumer or a bulk purchaser of motor gasoline with an allocation level determined by reference to a base period use, or its predecessor whose allocation it received, purchased gasoline during at least three of the months during the period October 1978 through February 1979 and the monthly average volume of such purchases from all suppliers in the months it purchased gasoline was at least ten percent greater than the aggregate amount of its actual motor gasoline purchases in a base period month from all suppliers, it can substitute as its base period use for the current month corresponding to that base period month its average monthly purchases in those months of the October 1978 through February 1979 period that it purchased motor gasoline. The purchaser's base period suppliers will be

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required to supply the adjusted volumes as determined in paragraph (b) of this section.

(2) For the month of April 1979, if the average monthly gasoline purchases by a retail sales outlet, wholesale purchaser-consumer or bulk purchaser in the months it purchased motor gasoline in the period October 1978 through February 1979 were at least thirty-five percent higher than its total April 1978 purchases from all suppliers, its October 1978 through February 1979 average monthly purchases of motor gasoline in the months it purchased motor gasoline may be substituted for its April 1978 purchases as its base period use.

(b) The portion of the adjusted base period use that each base period supplier is required to supply shall be derived on the following basis: Where a purchaser has multiple suppliers, each base period supplier will continue to have a supply obligation (prior to the application of the allocation fraction) at least equal to the actual volumes it supplied during the corresponding base period month. If the amount of the adjustment, i. e., the average monthly volumes supplied during the October 1978 through February 1979 period in excess of actual base period purchases, is attributable to particular base period suppliers, then each such supplier will be responsible for the portion of the adjustment it supplied. If a portion of the adjustment is not attributable to a particular base period supplier, then that portion of the adjustment will be supplied by all the base period suppliers based on the proportional share of gasoline the firm purchased from each supplier in the base period month.

✓ (c) A supplier shall make the adjustment under paragraph (a) of this section without a request by a wholesale purchaser or bulk purchaser to the extent that the supplier's records indicate that the purchaser is eligible for the adjustment. However, if a purchaser's average monthly purchases in the October 1978 through February 1979 period are not ten percent greater than its aggregate purchases in the base period month, no base period supplier is required to supply it additional volumes as an adjustment under this section even though the particular supplier may have provided greater than ten percent more product in the October 1978 through February 1979 period than in the corresponding base period month.

(d) Each firm desiring to receive an adjustment for volumes not attributable to particular base period suppliers shall notify each base period supplier of the additional amount of the adjustment to be added to its base period use. For purposes of the notification, a purchaser will certify to its supplier (1) its aggregate purchases in a base period month; (2) its average monthly purchases during the October 1978 through February 1979 period; (3) the portion of the growth adjustment attributable to the particular supplier; and (4) the amount of the unattributable portion of the adjustment required to be supplied by the supplier. A purchaser is not required to disclose to one supplier the specific volumes supplied by any other supplier.

(e) An adjustment to a purchaser's base period use for a particular month determined under this section will automatically become part of the supplier's supply obligations and that supplier in turn may adjust upward its base period use and under the procedures of § 211.13(c) may certify the adjustment

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